

property R, and may not offset that loss against the gain attributable to property Q.

*Example 3. Transfer for less than fair market value.* A transfers property that has a fair market value of 1000X to FT in exchange for 400X of cash. A's adjusted basis in the property is 200X. FT has no U.S. beneficiary within the meaning of §1.679-2, and no person is treated as owning any portion of FT. Under paragraph (a)(1) of this section, A recognizes gain at the time of the transfer equal to 800X.

*Example 4. Exchange of property for private annuity.* A transfers property that has a fair market value of 1000X to FT in exchange for FT's obligation to pay A 50X per year for the rest of A's life. A's adjusted basis in the property is 100X. FT has no U.S. beneficiary within the meaning of §1.679-2, and no person is treated as owning any portion of FT. A is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though A might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code.

*Example 5. Transfer of property to related foreign trust in exchange for qualified obligation.* A transfers property that has a fair market value of 1000X to FT in exchange for FT's obligation to make payments to A during the next four years. FT is related to A as defined in §1.679-1(c)(5). The obligation is treated as a qualified obligation within the meaning of §1.679-4(d), and no person is treated as owning any portion of FT. A's adjusted basis in the property is 100X. A is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though A might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code. Section 1.684-3(d) provides rules relating to transfers for fair market value to unrelated foreign trusts.

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### § 1.684-2 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Indirect transfers—(1) In general.* Section 1.679-3(c) shall apply to determine if a transfer to a foreign trust or foreign estate, by any person, is treated as an indirect transfer by a U.S. person to the foreign trust or foreign estate.

(2) *Examples.* The following examples illustrate the rules of this paragraph (b). In all examples, A is a U.S. citizen, FT is a foreign trust, and I is A's uncle, who is a nonresident alien. The examples are as follows:

*Example 1. Principal purpose of tax avoidance.* A creates and funds FT for the benefit of A's cousin, who is a nonresident alien. FT has no U.S. beneficiary within the meaning of §1.679-2, and no person is treated as owning any portion of FT. In 2004, A decides to transfer additional property with a fair market value of 1000X and an adjusted basis of 600X to FT. Pursuant to a plan with a principal purpose of avoiding the application of section 684, A transfers the property to I. I subsequently transfers the property to FT. Under paragraph (b) of this section and §1.679-3(c), A is treated as having transferred the property to FT.

*Example 2. U.S. person unable to demonstrate that intermediary acted independently.* A creates and funds FT for the benefit of A's cousin, who is a nonresident alien. FT has no U.S. beneficiary within the meaning of §1.679-2, and no person is treated as owning any portion of FT. On July 1, 2004, A transfers property with a fair market value of 1000X and an adjusted basis of 300X to I, a foreign person. On January 1, 2007, at a time when the fair market value of the property is 1100X, I transfers the property to FT. A is unable to demonstrate to the satisfaction of the Commissioner, under §1.679-3(c)(2)(ii), that I acted independently of A in making the transfer to FT. Under paragraph (b) of this section and §1.679-3(c), A is treated as having transferred the property to FT. Under paragraph (b) of this section and §1.679-3(c)(3), I is treated as an agent of A, and the transfer is deemed to have been made on January 1, 2007. Under §1.684-1(a), A recognizes gain equal to 800X on that date.

(c) *Constructive transfers.* Section 1.679-3(d) shall apply to determine if a transfer to a foreign trust or foreign estate is treated as a constructive transfer by a U.S. person to the foreign trust or foreign estate.

(d) *Transfers by certain trusts—(1) In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In all examples, A is a U.S. person, DT is a domestic trust, and FT is a foreign trust. The examples are as follows:

*Example 1. Transfer by a domestic trust.* On January 1, 2001, A transfers property which has a fair market value of 1000X and an adjusted basis of 200X to DT. A retains the power to revoke DT. On January 1, 2003, DT transfers property which has a fair market value of 500X and an adjusted basis of 100X to

*FT*. At the time of the transfer, *FT* has no U.S. beneficiary as defined in § 1.679-2 and no person is treated as owning any portion of *FT*. *A* is treated as having transferred the property to *FT* and is required to recognize gain of 400X, under § 1.684-1, at the time of the transfer by *DT* to *FT*.

*Example 2. Transfer by a foreign trust.* On January 1, 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis of 200X to *FT1*. At the time of the transfer, *FT1* has a U.S. beneficiary as defined in § 1.679-2 and *A* is treated as the owner of *FT1* under section 679. On January 1, 2003, *FT1* transfers property which has a fair market value of 500X and an adjusted basis of 100X to *FT2*. At the time of the transfer, *FT2* has no U.S. beneficiary as defined in § 1.679-2 and no person is treated as owning any portion of *FT2*. *A* is treated as having transferred the property to *FT2* and is required to recognize gain of 400X, under § 1.684-1, at the time of the transfer by *FT1* to *FT2*.

(e) *Deemed transfers when foreign trust no longer treated as owned by a U.S. person—(1) In general.* If any portion of a foreign trust is treated as owned by a U.S. person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, and such portion ceases to be treated as owned by that person under such subpart (other than by reason of an actual transfer of property from the trust to which § 1.684-2(d) applies), the U.S. person shall be treated as having transferred, immediately before (but on the same date that) the trust is no longer treated as owned by that U.S. person, the assets of such portion to a foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (e). In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

*Example 1. Loss of U.S. beneficiary.* (i) On January 1, 2001, *A* transfers property, which has a fair market value of 1000X and an adjusted basis of 400X, to *FT*. At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679-2, and *A* is treated as owning *FT* under section 679. Under § 1.684-3(a), § 1.684-1 does not cause *A* to recognize gain at the time of the transfer.

(ii) On July 1, 2003, *FT* ceases to have a U.S. beneficiary as defined in § 1.679-2(c) and as of that date neither *A* nor any other person is treated as owning any portion of *FT*. Pursuant to § 1.679-2(c)(2), if *FT* ceases to be treated as having a U.S. beneficiary, *A* will cease to be treated as owner of *FT* beginning on the first day of the first taxable year fol-

lowing the last taxable year in which there was a U.S. beneficiary. Thus, on January 1, 2004, *A* ceases to be treated as owner of *FT*. On that date, the fair market value of the property is 1200X and the adjusted basis is 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2004, and must recognize 850X of gain at that time under § 1.684-1.

*Example 2. Death of grantor.* (i) The initial facts are the same as in paragraph (i) of *Example 1*.

(ii) On July 1, 2003, *A* dies, and as of that date no other person is treated as the owner of *FT*. On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* immediately before his death, and generally is required to recognize 850X of gain at that time under § 1.684-1. However, an exception may apply under § 1.684-3(c).

*Example 3. Release of a power.* (i) On January 1, 2001, *A* transfers property that has a fair market value of 500X and an adjusted basis of 200X to *FT*. At the time of the transfer, *FT* does not have a U.S. beneficiary within the meaning of § 1.679-2. However, *A* retains the power to revoke the trust. *A* is treated as the owner of the trust under section 676 and, therefore, under § 1.684-3(a), *A* is not required to recognize gain under § 1.684-1 at the time of the transfer.

(ii) On January 1, 2007, *A* releases the power to revoke the trust and, as of that date, neither *A* nor any other person is treated as owning any portion of *FT*. On that date, the fair market value of the property is 900X, and its adjusted basis is 200X. Under paragraph (e)(1) of this section, *A* is treated as having transferred the property to *FT* on January 1, 2007, and must recognize 700X of gain at that time.

(f) *Transfers to entities owned by a foreign trust.* Section 1.679-3(f) provides rules that apply with respect to transfers of property by a U.S. person to an entity in which a foreign trust holds an ownership interest.

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### § 1.684-3 Exceptions to general rule of gain recognition.

(a) *Transfers to grantor trusts.* The general rule of gain recognition under § 1.684-1 shall not apply to any transfer of property by a U.S. person to a foreign trust to the extent that any person is treated as the owner of the trust under section 671. Section 1.684-2(e)